85-1474

Supreme Court U.S.
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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

L. T. WILLIAMS AND LORRAINE WILLIAMS,

PETITIONER,

VS.

UNITED STATES OF AMERICA

RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT
FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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February 20, 1986

QUESTIONS PRESENTED

DOES THE DECISION BELOW CONFLICT WITH STARE DECISI OF THIS COURT IN MULLANE V. HANOVER CENTRAL BANK AND TRUST REGARDING THE ISSUE OF NOTICE MOST REASONABLY CALCULATED TO PROVIDE ACTUAL NOTIFICATION TO ONE WHOSE PROPERTY RIGHT IS TO BE IMPAIRED?

IS THE QUESTION OF REASONABLE NOTICE A QUESTION OF FACT OR LAW?

ARE THE TERMS AND CONDITIONS OF THE FACE OF THE BILL CONTROLLING WHERE THERE IS A CONTRADICTION BETWEEN THE FACE OF THE BILL AND THE ENABLING STATUTES?

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OPINIONS BELOW

The opinion of the United States District Court, for the Eastern District of California is unreported; however, it is printed in the appendix A, pages a1 through a7. The memorandum of the United States Court of Appeals for the Ninth Circuit is unreported; however, it is printed in the Appendix A, pages a7 through a10. No request for rehearing was made by the Petitioners.

JURISDICTION

The order of the United States District Court, for the Eastern District granting the Appellee United States' motion for summary judgment was entered on November 1, 1984 against the Petitioners. On November

25, 1985, the United States Court of Appeals, for the Ninth Circuit, affirmed the order. No request for rehearing was made by Petitioners.

This court has jurisdiction pursuant to 28 U.S.C. 1254(1). The federal court has jurisdiction initially pursuant to 28 U.S.C 1331.

(nothing omitted)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

FEDERAL:

SECOND CONGRESS, Session II. CH. 6. (February 12, 1793)
(limitations of certain claims against U.S. to 1st May, 1794.)

Chap. VI: AN ACT RELATIVE TO CLAIMS AGAINST THE UNITED STATES NOT BARRED BY ANY ACT OF LIMITATION, AND WHICH HAVE NOT BEEN ALREADY ADJUSTED.

Section I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims upon the United States, for services or supplies, or for other cause, matter or thing, furnished or done, previous to the fourth day of March one thousand seven hundred and eighty-nine, whether founded upon certificates, or other written documents from public officers, or otherwise, shich have not already been barred by any act of limitation, and which shall not be presented at the treasury, befor the first day of May, one thousand seven hundred and ninety-four, shall forever after be barred and precluded from setttlement or allowance: Provided, That nothing herein contained shall be construed to affect loan-office certificates, certificates of final settlement, indents of interest, balances entered in the books of the register of the treasury, certificates issued by the register of treasury, commonly called registered certificates, loans of money obtained in foreign countries,

or certificates issued pursuant to the act, intitled "An act making provision for the debt of the United States.: And provided further, That nothing herein contained, shall be construed to prohibit the proper officersof the treasury from demanding an account or accounts to be rendered, for any monies heretofore advanced, and not accounted for, or from admitting under the usual forms and restrictions, credits for expenditures, equal to the sums which have been so advanced.

JOURNALS OF THE CONTINENTAL CONGRESS (1774-1789)
Volume XVI. 1780

(Congress proceeded to the consideration of the report, which being debated by paragraphs was agreed to, in pertinent part,as follows with those portions appearing in [ ] being those portions which were deleted:)

[The Committee to whom were referred sundry papers relating to the state of the publick finances, beg leave to report that

Congress having been driven into thie just and necessary wàr at a time when no regular civil governments were established of sufficient energy to enforce the collection of taxes, or to provide funds for the redemption of such bills of credit as their necessities obliged them to issue, and before the powers of Europe were sufficiently convinced of the justice of their cause, or the probable event of the controversy, to venture to afford them aid or credit: which

bills, emitted under the circumstances above-mentioned were in their nature, as the vent has shown, liable to depreciate; and are in fact sunk notwithstanding the purest intentions and repeated exertions to support the, so low as to be now current by common consent at less than 1/16 part their nominal value, and still remain in a state of uncertainty and fluctuation whereby great mischiefs and distress ensue to the community, the publick finances are deranged, and the necessary dispositions for the defence of the country greatly impeded and embarrassed; which evils are the more intollerable as America has it now in her power to extricate herself out of them, as her Independance is now well-assured, her interests and credit in Europe daily gaining strenth, her interal governments established and bigorous and unconquered spirit of her citizens yet ardent for exertiona: and whereas, the means essentailly necessary, as it is apprehended, to give the same stability to the paper medium now as in former times, are to reduce the quantity to its former limits, and to place it on funds to be established and granted by the legislatures of the several states for that purpose; Therefore,]

These United States having been driven into this just and necessary war, at a time when no regular civil governments were established, of sufficient energy to enforce the collection of taxes, or to provide funds for the redemption of such bills

of credit as their necessities obliged them to issue; and before the powers of Europe were sufficiently convinced of the justice of their cause, or of the probable event of the controversy, to afford them aid or credit, in consequence of which, their bills increasing in quantity behond the sum necessary for the purpose of a circulating medium, and wanting, at the same time, specific funds to rest on for their redemption, they have seen them daily sink in value, notwithstanding every effort that has been made to support the same; insomuch that they are now passed, by common consent, in most parts of these United States, at leas 30-40ths below their nominal value, and still remain in a state of depreciation, whereby the community suffers great injustice, the public finances are deranged, and the necessary dispositions for the defence of the county are much impeded and perplexed; and whereas, as effectually to remedy these evils, for which purpose the United States are now become competent, their independence being well assured, their civil governments established and vigorous, and the spirit of their citizens ardent for exertion, it is necessary speedily to reduce the quantity of the paper medium in circulation, and to establish and appropriate funds that shall ensure the punctual redemption of the bills; therefore,

[That the resolution of the 23d day of February, so far as respects relinquishing to the states two-thirds

of the quotes assigned them by the resolution of October, 1779, be repealed.

That the states be called on to continue their said quotes of fifteen million dollars monthly, to the month of April, 1781, inclusive.]

Resolved, That the several states continue to bring into the continental treasury, by taxes or otherwise, their full quotas of fifteen million dollars monthly, as assigned them by the resolution of the 7th of October, 1779; a clause in the resolution of the 23d of February last, for relinquishing two-thirds of the said quotas, to the contrary notwithstanding; and that the states be further called on to make provision for continuing to bring into said treasury their like quotas monthly, to the month of April, 1781, inclusive:

That silver and gold be receivable in payment of the said quotas, at the rate of on Spanish milled dollar in lieu of 40 dollars of the bills now in circulation.

That said bills, as paid in, except for the months of January and February past, which may be necessary for the discharge of past contracts, be not re-issued, but destroyed.

[That the specie paid in on said quotas be appropriated solely to sinking the outstanding bills.] (Rejected)

That as fast as the said bills shall be brought in to be destroyed, and funds shall be established, as hereafter mentioned, for other bills, other bills be issued, not to exceed,

on any account, one-twentieth part of the nominal sum of the bills brought in to be destroyed.

That the bills which shall be issued, be redeemable in the specie, within six years after the present, and bear an interest at the rate of five per centum per annum, to be paid also in specie at the redemption of the bills, or, at the election of the holder, annually, at the respective continental loan offices, in sterling bills of exchange, drawn by the United States on their commissioners in Europe, at four shillings and six pence sterling per dollar.

That the said new bills issue on the funds of individual states, for that purpose established, and be signed by persons appointed by them, and that the faith of the United States be also pledged for the payment of the said bills, in case any State on whose funds they shall be emitted, should, by the events of war, be rendered incapable to redeem them; which undertaking of the United States, and that of drawing bills of exchange, for payment of interest as aforesaid, [if demanded], shall be endorsed on the bills to be emitted, and signed by a commissioner to be appointed by Congress for that purpose.

That the face of the bills to be emitted read as follows, viz.

The possessor of this bill shall be paid Spanish milled dollars, by the 31 day of December, 1786, with interest, in like money at the rate of five per cent, per annum, by the State

of , according to an act of the legislature of the said State, of the day of , 1780.

And the endorsement shall be as follows, viz.

["The United States of America will pay this bill according to the face of it, if the State of should by any means fail of its redemption; and will also pay the interest annually in bills of exchange on their commissioners in Europe, at four shillings, six pence sterling, per dollar, if desired, agreeable to a resolution of Congress on the day of March, 1780."] (Postponed)

The United States ensure the payment of the within bill, and will draw bills of exchange for the interest annually, if demanded, according to a resolution of Congress of the 18 day of March, 1780.

That the said new bills shall be struck under the direction of the Board of Treasury, in due proportion for each State, according to their said monthly quotas, and lodged in the continental loan offices in the respective states, where the commissioner to be appointed by Congress, in conjunction with such persons as the respective states appoint, shall attend the signing of the said bills; which shall be compleated no faster than in the aforesaid proportion of one to twenty of the other bills brought in to be destroyed, and which shall be lodged for that purpose in the said loan offices.

That as the said new bills are

signed and compleated, the states respectively, on whose funds they issue, receive six-tenths of them, and that the remainder be subject to the order of the United States, and credited to the states on whose funds they are issued, and accounts whereof shall be adjusted agreeably to the resolution of the 6th of October, 1779.

That said new bills be receivable in payment of the said monthly quotas, at the same rate as aforesaid of specie; the interest thereon to be computed to the respective states, to the day the payment becomes due.

That the respective states be charged with such parts of the interest on their said bills, as shall be paid by the United States in bills of exchange; and the accounts thereof shall be adjusted agreeably to the resolution aforesaid, of the 6th of October, 1779.

That whenever interest on the bills to be emitted shall be paid prior to their redemption, such bills shall be thereupon exchanged for other of the like tenor, to bear date from the [time of such exchange] expiration of the year for which such interest is paid.

That the several states be called on to provide funds for their quotas of the said new bills, to be so productive as to sink or redeem one sixth part of them annually, after the 1st day of January next.

That nothing in the foregoing resolutions shall be construed to ascertain the proportions of the

expence incurred by the war, which each state on a final adjustment out to be charged with, or to exclude the claims of any State to have the prices at which different states have furnished supplies for the army hereafter taken into consideration and equitably adjusted.

That the foregoing resolutions, with a letter from the President, be despatched to the executive of the several states, and that they be requested to call their assemblies, if not already convened, as speedily as possible, to take them into immedidate consideration, to establish ample and certain funds for the purposes therein mentioned, and to take every other measure necessary to carrey the same into full and vigorous effect, and that they transmit their acts for that purpose to Congress without delay. *

On passing the foregoing resolution, the yeas and nays were required by Mr. [Allen]

(The votes are not reprinted herein)

So it passed in the affirmative.

* (footnotes) This report, in the writing of Oliver Ellsworth, is in the Papers of Continental Congress, No. 26, folio 149.

An amendment, in the writing of Robert R. Livingston, endorsed: "Withdrawn" in the Papers of the Continental Congress, No. 26, folio 159 as follows;

1. That the monthly tax to the 1st day of October next be levied agreeable to the resolution of the 6th

day of October last.

That from thenceforward annually after the present year taxes be imposed to be levied quarterly equal to one third of the former emissions of the continental bills of credit which may be then in circulation.

2. That silver, &c.

3. That one half of the Bills so brought in by taxes be destroyed.

4. That as soon as the bills are brought in and destroyed as aforesaid, or funds are established as hereinafter mentioned by one or more states, other bills be issued upon the credit of such funds equal to the amount thereof not to exceed on any account one twentieth part of the bills brought in and destroyed and the money in circulation calculated at forty dollars of the bills now in circulation for one in specie, so that the whole debt shall on no account exceed 10,000,000 of dollars in specie.

4th CONGRESS, 1st SESSION, NO. 66.
PROCEEDINGS OF THE ACCOUNTING OFFICERS OF THE TREASURY ON CERTAIN CLAIMS COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, DECEMBER 24, 1795

No. 6,365 TREASURY DEPARTMENT, AUDITOR'S OFFICE, JANUARY 19, 1795

I certify that, pursuant to an act of Congress, passed on the 12th day of February, 1793, entitled "An act relative to claims against the United States not barred by any act of limitation, and which have not been already adjusted," there have been

received and registered at this office one hundred and twenty-four claims, presented by the persons named in the accompnaying abstract; which claims, being distributed into fourteen classes, I have examined, and am of opinion that the same are inadmissible at the Treasury, for the reasons hereafter assigned to treating of each particular class.

...

Class 8--The claims of this class are founded on bills of credit, commonly called bills of the new emissions, issued on the funds of individual States, pursuant to an act of Congress of the 18th March, 1780. The following clause of the said act shows in what event the United States were to become answerable for the payment of these bills. "That the said new bills issue on the funds of indivudual States, for that purpose established, and be signed by persons appointed by them; and that the faith of the United States be also pledged for the payment of the said bills, in case any State on whose funds they shall be emitted, should, by the events of war, be rendered incapable of redeeming them."

The interest accuring on them was to have been paid by the United States, annually, if called for, in bills of exchange on Europe, and the amount charged to the States, respectively. It does not appear, however, that any such payments were made.

It is understood that the several States concerned have passed laws providing for the redemption of their

respective portions of this money; and it is presumable that the far greater part thereof has been redeemed accordingly. The bills for which payment is now claimed are chiefly of those issued by the States of New Hampshire, Massaschustts, and Rhode Island.

This species of paper have never been considered as forming any part of the debt of the United States.

AMENDMENT 14: §1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without its jurisdiction the equal protection of the laws.

STATE:

CHAPTER 2.
State of
New Hampshire.

AN ACT FOR COMPLYING WITH AND CARRYING INTO EXECUTION CERTAIN RESOLUTIONS OF CONGRESS OF THE 18th OF MARCH 1780 FOR SINKING THE BILLS OF PUBLICK CREDIT NOW CURRENT AND FOR ISSUING OTHER BILLS IN THEIR STEAD.

[Passsed April 29, 1780. Original Acts, vol. 8, p. 16; recorded Acts, vol. 4, p. 68. Law, 1780 ed., p. 234.]

Whereas it is in and by said resolutions of the continental congress of the 18th of March A.D. 1780 recommended to each and every of the united states to continue the monthly tax for each State's quota of fifteen million dollers a month from the month of January last untill the month of April 1781 inclusively The quota of this state toward said tax being four hundred thousand dollers a month and amounting in the whole to six millions & four hundred thousand dollers And whereas this state have already made provision for levying and collecting the sum of three millions & six hundred thousand dollers agreable to a resolution of congress of the 7th of October 1779.

Be it therefore enacted by the councill and house of representatives that the further sum of two millions and eight hundred thousand dollers being the remainder of this states quota of the monthly tax aforesaid shall be taken out of the mony ordered to be raised for the use of this State by an act passed on the fifteenth day of March last and the same shall be appropriated to the sole use and purpose of pay said remainder of the monthly tax and to no other use or purpose whatsoever and shall be paid accordingly before the last day of April 1781.

And whereas it is farther recommended by congress to the several states to provide funds for redeeming certain new bills to be issued agreable to said resolutions of

congress of the 18th of march last in the room of the bills now in circulation and this states quota of the said new bills being by calculation supposed to be two hundred & eighty thousand dollers besides the annual interest of said bills at five percent untill they are redeemed.

Be it therefore further enacted by the Authority aforesaid that the said sum of two hundred & eighty thousand dollers shall be taxed assessed collected and paid into the treasury of this state in six equal payments or sums the first payment to be made by the last day of December A D 1781 and so to continue in yearly payments untill the whole is paid in spanish milled dollers or other silver and gold of the same value or in the bills last mentioned with a further sum sufficient for paying the annual interest of said bills and the mony so to be collected shall be applied to the sole purpose of redeeming and sinking said bills and for not other purpose whatsoever agreable to the true intent and meaning of the resolution of Congress for that purpose. And the treasurer of this state or his successer or successors for the time being shall issue warranted to the several towns and districts withing this state in the month of April annually for that purpose and the same shall be executed according to the laws for collecting publick taxes within this state.

And Be it farther enacted by the authority aforesaid that Messrs Joseph Pearson, Ephraim Robinson and James

McCluer all of Exeter be and hereby are appointed a committee to sign all such bills as belong to the quota of this state.

And Be it farther enacted by the authority aforesaid that silver or any of the new bills to be emitted as aforesaid may be received in the room of the mony now in circulation in payment of said monthly taxes at the rate of one doller of silver or new bills for forty of the mony now in circulation.

STATEMENT OF THE CASE

Petitioners brought this action pursuant to 28 U.S.C. 1331 seeking recovery of the value of a certain ancient document (a Revolutionary War bond), a Bill of Emission issued by the State of New Hampshire by authority of the United States of America on or about March 17, 1870.

Petitioners presented this Bill to both the State of New Hampshire, from whom the Bill was initially purchased, and to the United States of America, who guaranteed the payment of this Bill with the "credit" of the United States as provided on the face of the Bill. Both the State of New Hampshire and the United States failed and refused to make any payment on said

Bill. The State of New Hampshire motioned for and was granted an order of dismissal on the grounds of the United States Constitution, 11 Amendment. (This issue is NOT raised herein). The United States motioned the district court for an order granting summary judgment on the grounds that there was no triable issue of fact in this matter and that the claim was barred by the Statute of Limitations and by the failure of the condition precedent stated in the 16 Journals of the Congress of the Continental Congress, 1774-1779 263 (1910) (Volume XVI).

REASONS FOR GRANTING THE WRIT

The questions raised are

substantial and Petitioners respectfully request that this Writ be granted on the following grounds:

(1) THE DECISION BELOW CONFLICTS WITH STARE DECISI OF THIS COURT IN MULLANE v. CENTRAL HANOVER BANK AND TRUST COMPANY, 339 U.S. 306 (1949).

This Court has clearly set forth the standard for notice in the landmark case of Mullane v. Central Hanover Bank and Trust Company, supra, 339 U.S. 306, wherein this Court stated as follows with respect to the right of a beneficiary to notice where his property rights will be affected:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated,under all the circumstances, to apprise interested parties of

> the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 85 L. Ed. 278, 61 S. Ct. 779; Priest v. Las Vegas, 232 U.S. 604, 58 L. Ed. 751, 34 S. Ct. 443; Roller v. Holly, 176 U.S. 398, 44 L. Ed. 520, 20 S. Ct. 410. The notice must be of such nature as reasonably to convey the required information, Grannis v. Ordean, 234 U.S. 385, 58 L. Ed. 1363, 34 S.Ct. 779, supra, and it must afford a reasonable time for those interested to make their appearanced, Roller v. Holley, 176 U.S. 398, 44 L. Ed. 914, 29 S. Ct. 580."

In Petitioners' case, the issue centers around the passing by Congress on February 12, 1793 of a Statute of Limitations which has essentially deprived the Petitioners of their right to reimbursement for the Bill (Second Congress, Section II, Chapter 6, set forth in the statutes herein).

The Statute of Limitations enacted by this legislation permits persons who own or possess said Bills to present these Bills or make claim on or before May 1, 1794. However, the language of the Statute of Limitations is so obviously vague and incomprehensible that it fails to comport with the minimum requirements of due process of reasonable notice as set forth by this Court in Mullane v. Central Hanover Bank and Trust Company, supra, 339 U.S. 306.

Initially, the statute fails to identify the Bills, such as the one owned and possessed by the Petitioners herein, as the subjects of the Statute of Limitations; secondly, the Appellee admits that when these

certain Bills were presented in a timely, payment was denied on the grounds that the United States never considered these Bills as a part of the United States' debt (see 4th Congress, 1st session, No. 66, Proceedings of the accounting officers of the Treasury on Certain Claims set forth herein):

> "...This species [the Bill herein at issue] of paper has never been considered as forming any part of the debt of the United States (Secretary of the Treasury of the United States in his comments to Congress)."

This statement was not made until January 19, 1975 --in excess of seven (7) months AFTER the running of the Statute of Limitations establishing May 1, 1794 as the last date to

establish a claim against the United States concerning "this species of paper."

For the Appellee to have failed to define or sufficiently identify the "species of paper" to which the Statute of Limitations would bar all further recovery simply does not provide reasonable or adequate notice to those persons holding the Bills (species of paper) that any property right in which they have an interest is to be terminated on a particular date. Here the definition which would have given notice of the enactment of the Statute of Limitations and placed those holding the Bills on notice of the modification of their property right was NOT made until after the

Statute of Limitations had barred any recovery or right of claim against the United States.

It was never contended by the Appellee United States that the Petitioners did not have a property right by virtue of possession of the Bill; it was contended and found to be the case by both the United States District Court, Eastern District of California and the United States Court of Appeals for the Ninth Circuit (see appendix for the decisions) that the Statute of Limitations was a permissible intrusion upon the property rights of the Petitioners pursuant to this Court's holding in Mattson v. Department of Labor 293 U.S. 151 (1934) and the United States

District Court for Massachusetts [Selectman v. United States, 292 F. Supp. 1076 (D. Mass. 1968)] holding, in pertinent part, as follows:

> "[I]t is well established that a statute limiting the time for assertion even of preexisting property or contract rights is not unconstitutional provided it allows a reasonable time after its enactment for the assertion of those rights" (Selectman v. United States, supra, 292 F. Supp. 1075 (D. Mass. 1968).

To the contrary, the Petitioners relied upon the decision of this Court in Lynch v. United States 292 U.S. 571 (1934) that "... [t]he dominant intention was obviously to abolish rights, not remedies..." (at page 585) and the Statute of Limitations effectively would and did "... result in a complete destruction of the

property right of the secured party..." United States v. Security Industrial Bank 459 U.S. 70, 75 (1982). It is the Petitioners' consistent position that where, as here, the Appellee has drafted a Statute of Limitations ambigious on its face and so lacking in definition and identification as is the Statute of Limitations of February 12, 1793, NO notice is given to the Petitioners of the manner in which they may employ the "remedy" granted to them by this Statute. This Court has stated in Mullane v. Central Hanover Bank and Trust Company, supra, 339 U.S. 306, 314 that the right to be heard and to avail oneself of the right of due process requires nothing less than notice:

> "The fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 58 L. Ed. 1363, 34 S. Ct. 779. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether or appear or default, acquiesce or contest."

Second, even if the Statute of Limitations of February 12, 1793 is not fatally defective for lack of definition or identification of those "species of papers" which would be effected by the Statute of Limitations, no reasonable notification was given to those persons holding the Bills that the statute had been enacted and that statute modified their property rights. Again, citing from this Court's decision in Mullane v. Central

Hanover Bank and Trust Company, supra,

339 U.S. 303, 314:

> "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, compare Hess v. Pawloski 274 U.S. 352, 71 L. Ed. 1091, 47 S. Ct. 632, with Wuchter v. Pizzutte, 276 U.S. 13, 72 L. Ed. 446, 48 S.Ct. 259, 57 ALR 1230, or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.
>
> It would be ideal to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts...
>
> [N]or is publication here reinforced by steps likely to

> attract the parties' attention to the proceeding. It is true that publication traditionally has been acceptable as notification supplemental to other action which in itself may reasonably be expected t convey a warning," at pages 315-316.

It is undisputed in Petitioners' case, neither the Petitioners nor the Appellee filed a single affidavit or declaration in support or opposition the the Appellee United States' motion for summary judgment. All parties relied upon the ancient documents totally to support their respective positions. The ancient documents that were before the United States District Court and the United States Court of Appeals have been reproduce in pertinent part herein. There is no reference to nor did the Appellee United States suggest, infer or argue

that the Appellee had made publication or any minimal effort to INFORM those persons holding/possessing this "species of paper" that they had a little more than one year (February 12, 1793 through May 1, 1794) to make a claim against the United States.

Under these circumstances, no notice of any kind was given or there is absolutely no evidence of any notice of any kind being given to the persons possessing this "species of paper." Therefore, the Statute of Limitations of February 12, 1793 is unconstitutional and cannot provide a basis for granting a motion for summary judgment against the Petitioners herein.

(2) THE QUESTION OF REASONABLE

NOTICE IS A FACT QUESTION AND NOT SUBJECT TO DETERMINATION AS A MATTER OF LAW.

Petitioners further respectfully contend that while a court of competent jurisdiction may find, as a matter of law, that the notice is NOT reasonable and does not meet constitutional standards, Mullane v. Hanover Bank and Trust Company, supra, 339 U.S. 306, to the contrary, what notice IS reasonable is a proper question of fact -- one which the Petitioners are entitled to submit to a jury for determination. Therefore, the granting of the Appellee United States' motion for summary judgment against the Petitioners on the basis that the Statute of Limitation was

premature UNTIL a jury determined whether or not the notice was reasonably calculated to give notice to the Petitioners that their property rights were being modified, if not destroyed, the the Act of Congress which established the Statute of Limitations of February 12, 1793.

(Petitioners further assert that the Statute of Limitations of March 3, 1911 found in Title 28 United States Code 41(20) 1940 Ed. and is now Title 28 United States Code §2401(a) is flawed for the same reasons as is the Statute of Limitations of February 12, 1793.)

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(3) THE TERMS AND CONDITIONS OF THE FACE OF THE BILL ARE CONTROLLING WHERE THERE IS A CONTRADICTION BETWEEN THE FACE OF THE BILL AND THE ENABLING STATUTES.

In 1780, the Appellee United States was desparate for financing to sustain its Revolutionary War effort against England:

> ...[T]hese United States having been driven into this just and necessary war (Revolutionary War), at a time when no regular civil governments were established, or sufficient energy to enforce the collection of taxes, or to provide funds for the redemption of such bills of credit as their necessities obligated them to issue; and before the powers of Europe were sufficiently convinced of the justice of their cause, or of the probable event of the controversy, to afford them aid or credit, ...Journals of the Continental Congress,

As a consequence thereof, Congress enacted legislation permitting and authorizing and compelling the various states, including New Hampshire, to issue Bills (the specie of paper at issue herein). Congress provided, in pertinent part, as follows:

> That the face of the bills to be emitted read as follows, viz.
>
> 'The possessor of this bill shall be paid Spanish milled dollars, by the 31 day of December,1780, with interest, in like money, at the rate of five per cent, per annum, by the State of ,according to an act of the legislature of the said State, of the day of , 1780.'
>
> And the endorsement shall be as follows, viz.
>
> " The United States of America ensure the payment of the within bill, and will draw

> bills of exchange for the interest annually, if demanded, according to a resolution of Congress of the 18 day of March, 1780."

In fact, this is precisely the language which appears on the face of the Bill and the reverse side of the Bill which is now in the possession of the Petitioners, with certain wording in addition thereto:

> The Possessor of this Bill shall be paid seven spanish milled dollars by the thirty-first day of December; One Thousand Seven Hundred and eighty-Six, with Interest in like Money, at the Rate of Five per Centum per Annum, by the State of New Hampshire, according to an Act of the Legislature of the said State, of the Twenty-ninth Day of April, 1780.
>
> The United States ensure the Payment of the within Bill, and will draw Bills of Exchange for the Interest annually, if demanded, according to a Resolution of

Congress, of the 18th of March, 1780.

When Petitioners commenced this action to collect said sums from either the State of New Hampshire (which was dismissed pursuant to the United States Constitution, Amendment 11 when the matter was pending in the United States District Court, Eastern District of California) or the Appellee United States, or both of them collectively, the Petitioners were confronted by Appellee United States with the language of the enabling statute which modified the terms and conditions of the face of the Bill as follows:

> ...
> [T]hat the said new bills issue on the funds of individual states, for that purpose established, and be

> signed by persons appointed by them, and that the faith of the United States be also pledged for the payment of the said bills, in case any State on whose funds they shall be emitted, should, by the events of war, be rendered incapable to redeem them;...(Journals of Congress, Volume XVI, 1780).

The act of the New Hampshire legislature of April 23,1780 refers to the Journals of the Continental Congress, Volume XVI, March 1780.

> ...
>
> [A]nd whereas it is farther recommended by congress to the several states to provide funds for redeeming certain new bills to be issued agreable to said resolutions of congress of the 18th of March last in the room of the bills now in circulation and this states quota of said new bills being by calculation supposed to be two hundred & eighty thousand dollers besides the annual interest of said bills at five per cent untill they are redeemed...(emphasis added).

The Journals of the Continental

Congress, Vol. XVI, March 17, 1780 contain a restriction of the liability of the Appellee United States --namely, that the United States has liability when, by events of war, the State from which the Bill(s) was/were purchased is unable to redeem said Bill(s) upon request of the possessor of the Bill(s). However, the language which was approved verbatum to be placed upon the Bills which were emitted and purchased by members of the various States also appears in the Journals of the Continental Congress --and omits any reference to "events of war" as a limitation upon the credit of the United States in guaranteeing payment of the Bill.

This omission was deliberate and

calculated. The Journals of the Continental Congress, Volume XVI, March 17, 1780 expressly deleted the language of a general and unconditional guarantee by the United States for the payment of these Bills (all portions of text, even those deleted appear in the recitation of statutes hereinbefore set forth); yet, the Continental Congress authorized that the unconditional guarantee by the credit of the United States to appear on the reverse side of each Bill that was issued by every State.

It is well settled that where a contract is drafted by one party to the contract, any ambiguity is to be construed against the drafter. Rest., Contracts §236(d); Glenn v.

Bacon (1927) 86 Cal. App. 58; Coast Mutual etc. Assn. v.Security Title etc. Co. (1936) 14 Cal. App. 2d 225, 229; Earl Ranch v. Marchus (1943) 60 Cal. App. 2d 379, 383; Basin Oil Co. v. Baash-Ross Tool Co. (1954) 125 Cal. App. 2d 578, 595; 3 Corbin §559; 4 Williston 3d §621; 17 Am. Jur. 2d, Contracts §276.

Here, the ultimate responsibility for the "drafting" of the terms and conditions which would appear on the Bill was vested in the Appellee United States. The authorization or enabling statute for the issuance of the Bills rested squarely within the jurisdiction and unfettered control and discretion of the Appellee United States.

Petitioners respectfully contend that the face of the Bill controls the issue of whether or not the new and additional term and condition --namely, the insertion of a condition precedent to any obligation of the Appellee United States-- is a part of the contract. Petitioners urge that this Court adopt the long standing rule of construction that ambiguities be resolved against the drafter of the contract and that this Court find that the Appellee United States was the drafter of the contract.

Furthermore, pursuant to the law of the State of California, Petitioners rely upon Evidence Code Section 623, which provides as follows:

> California Evidence Code &623: ESTOPPEL BY OWN STATEMENT OR CONDUCT. Whenever a party has, by his own statement or conduct, intentionally or deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.

Here Petitioners ancestors, in the initial purchasing of the Bill in question, relied upon the credit of the United States to make payment in the event of default by the State of New Hampshire. Pursuant to California Evidence Code, the Appellee United States is now estopped from denying that the promise to pay in event of default by the State of New Hampshire is absolute and not subject to a condition precedent.

/ / /

CONCLUSION

For the foregoing reasons this Court is respectfully requested to accept this case for hearing and to reverse the affirmation by the Court of Appeals for the Ninth Circuit of the order of the District Court granting the Appellee United States' motion for summary judgment and to

(Nothing omitted)

direct the Court of Appeal to direct the District Court to allow Petitioners to proceed in their action against the Appellee United States.

Dated: February 20, 1986

Respectfully submitted,

LORRAINE WILLIAMS

L. T. WILLIAMS

In Propria persona

by LORETTA H. HELLEN

Attorney at Law.

APPENDIX

ORDER GRANTING SUMMARY JUDGMENT IN UNITED STATES DISTRICT COURT ACTION NO S-81-190-MLS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF CALIFORNIA

L.T. WILLIAMS and LORRAINE WILLIAMS Plaintiffs, vs. UNITED STATES OF AMERICA Defendant.	Civil No.S-81-190 - MLS

MEMORANDUM AND ORDER

On October 5, 1984, the court heard defendant's motion for summary judgment. With respect to plaintiffs' contention in open court that their due process rights were impugned by a Congressional act terminating defendant's liability for plaintiffs' bill of credit, the court continued the motion for summary judgment pending further briefing by the parties.

Federal Rule of Civil Procedure 56(c) provides that summary judgment may be granted when it is demonstrated that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." It is axiomatic that the moving party bears the burden of establishing the absence of any genuine issues of material fact. Beltz Travel Service v. Int' Air Transport Ass'n, 620 F. 2d 1360, 1364 (9th Cir. 1980). The evidence presented to the court is construed in the light most favorable to the party opposing the motion and that party is entitled to all beneficial inferences that can reasonably be drawn from the evidence. The opposing party may rebut the moving party's showing with affidavits or other evidence justifying her opposi-

tion. Fed. R. Civ. P. 56(e); Avila v. Travelers Insurance Co., 651 F. 2d 658, 660 (9th Cir. 1981).

The facts in this case are basically undisputed. Plaintiffs are the present owners of a seven dollar bill of credit issued by the state of New Hampshire on or about April 29, 1780. The seven dollar bill was one of many such bills of credit (of "bills of the new emissions") authorized by the Continental Congress pursuant to an act dated March 17, 1780 in order to raise revenue for the Revolutionary War.

On one side the bill sets forth terms of redemption:

"The possessor of this bill shall be paid seven Spanish milled dollars by the thirty first day of December, one thousand seven hundred and eighty

six (December 31, 1786), with interest in like money, at the rate of five per centum per annum by the State of New Hampshire, according to an Act of the Legislature of the said state, of the twenty ninth day of April, 1780."

The other side of the bill reads as follows:

"The United States ensure the payment of the within bill and will draw Bills of Exchange for the interest annually, if demanded, according to a resolution of Congress of the 18th day of March, 1780."

Plaintiffs seek payment of the face value of the bill plus interest of five percent per annum for the past 204 years. Since the state of New Hampshire was dismissed from these federal court proceedings on August 18, 1982 because of eleventh amendment

sovereign immunity, the United States, as guarantor of the bill, is the sole remaining defendant. The only fact in real contention is whether the condition precedent to payment of the bill of credit has been satisfied.

The date of maturity specified on plaintiffs' bill of credit is December 31, 1786. Six years after that date, on February 12, 1793, Congress passed "[a]n Act related to claims against the United States, not barred by any act of limitation, and which have not been already adjusted." 2 Stat. 6, 2d Cong., 2d Sess. (1793). The court believes that this enactment establishes May 1, 1794 as the applicable cut-off date for recovery on Plaintiffs' claim.

The statute of limitations, however, should be considered in conjunc-

tion with the passage of a subsequent congressional act on December 24, 1795. Consistent with the mandate of 2 Stat. 6, several claims of the same class as Plaintiffs' were filed with the United States Treasury Department prior to the May 1, 1794 limitations date. The Treasury officers' recommendation to Congress repudiated claims similar to that of plaintiffs in spite of the fact that those claims, unlike this one, were filed before the May 1,1794 deadline.

The Treasury Department's recommendation as to the admissibility of claims of this type seems dispositive. The legislative record indicates that the affected states passed laws providing for the redemption of their respective portions of the money owed on bills of credit and that, presum-

ably, a great part of the bills of the new emissions had been redeemed. The text of the Treasury officers' recommendation contains certain key words in italics. The italicized phrases reemphasize that the federal government's guarantee for the redemption of the bills was conditioned on the states' own inability to redeem the bills.

The specific claims that were presented to the Treasury Department happened to be from New Hampshire, Massachusetts, and Rhode Island. Although those claims were timely presented, the Treasury Department's repudiation of the claims was based on the belief that the redemption of the claims should have been handled by those individual states pursuant to their own laws. Thus, the Treasury

Department concluded that "[t]his species of paper has never been considered as forming any part of the debt of the United States.

Plaintiffs interpose the Sinking Fund Cases, 99 U.S. 700 (1879), Perry v. United States, 294 U.S. 330 (1935), and United States v. Security Industrial Bank, 103 S. Ct. 407 (1982), as authority for the proposition that the United States cannot breach its contract to guarantee redemption and that the United States is as much bound by its contracts as are individuals. Be that as it may, those cases are inapposite to the facts in this particular case.

Here, defendant pledged payment on the bills of credit "in case any state on whose funds they shall be emitted should, by the events of war, be

rendered incapable to redeem them." See, Bill of New Emissions Act, Journals of the Continental Congress, March 1780, p. 264. Otherwise, it was understood that the states themselves were to redeem the bills. This court does not believe that it is reasonable to adopt either of the plaintiffs' suggested inferences, i.e., that the United States Treasury Department continues to act as trustee over existing funds arising from the sale of the bills, or that the funds raised by the states from the sale of the bills were in fact exhausted by reason of war debts. Since payment by defendant was conditional and there is no evidence that the condition precedent was met, the court concludes that defendant is not liable for payment on the bill.

Plaintiffs had notice on the face

of their bill that the maturity date was December 31, 1786. There is no evidence that plaintiffs' predecessors in interest ever sought payment from New Hampshire either at the time of maturity or at any time prior to defendant's May 1, 1794 deadline. Even if Plaintiffs could now show that their predecessors, in interest, had in fact demanded payment from New Hampshire and were turned away because of the depletion of funds resulting from the war effort, demand for payment from defendant is barred by the statute of limitations.

Congress' passage of a statute of limitaions is not violative of due process. See, Mattson v. Dept. of Labor, 293 U.S. 151 (1934). The deadline established in 2 Stat. 6 did not extinghish the viability of Plaint-

iffs' claim in toto, but established a period in excess of one year from the date of the newly enacted statute of limitations within which to file the claim. Given that plaintiffs had a total of over seven years from the bill's date of maturity within which to bring their claim and to prove that the conditions for payment had been met, there was no violation of due process. Plaintiffs cannot reasonably expect to let their claim sit for 198 years while interest accrued.

Since the court has found an applicable statute of limitations barring Plaintiffs' claim, there is no need to invoke the equitable doctrine of laches. See Morgan v. Koch, 419 F. 2d 993, 996 (7th Cir. 1969); Straley v.Universal Uranium & Milling Corp., 289 F. 2d 370, 373 (9th Cir., 1961).

For the foregoing reasons, Defendant's motion for summary judgment is hereby granted.

IT IS SO ORDERED.

DATED: October 31, 1984

(Milton L Schwartz)

UNITED STATES DISTRICT JUDGE.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NOT FOR PUBLICATION

L.T. WILLIAMS and LORRAINE WILLIAMS, Plaintiffs-Appellants, v. UNITED STATES OF AMERICA Defendant-Appellee	NO. 84-2768 DC NO. CIV. S-81-190-MLS

Appeal from the United States District Court for the Eastern District of California Milton L. Schwartz,

District Judge, Presiding

Argued and submitted November 12, 1985 -- San Francisco, California

Before: GOODWIN, NELSON and CANBY, Circuit Judges

L.T. and Lorraine Williams hold a bill of new emission issued by the State of New Hampshire in 1780. They seek payment on the bill from the United States, the conditional guarantor of the obligation.* The United States was obligated to pay if New Hampshire was unable to pay because of "the events of war." Resolution of Saturday, March 18, 1780, 16 Journals of the Continental Congress, 1774-1789 263 (1910). The district court grant-

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* The Williams'claim against the State of New Hampshire was dismissed on Eleventh Amendment grounds. They do not appeal the dismissal of that claim.

ed the government's motion for summary judgment on the ground that the claim is statutorily barred, and because the condition precedent to the obligation of the United States to pay the bill had not been met. We affirm.

In An Act Relative to Claims Against the United States not Barred by Any Act of Limitation, and Which Have Not Been Already Adjusted, ch. VI, §1, 1 Stat. 301 (1793) ("1793 Act"), Congress provided that claims against the United States which arose before March 4, 1789, would be barred if not brought before May 1, 1794. Plaintiffs argue that the retroactive application of this statute abrogated a pre-existing property right, thereby violating the due process clause of the Fifth Amendment. This argument must fail because the 1793 Act merely

limited the remedy available to the holders of bills of new emission, and did not abrogate their property rights in such instruments. See Atchafalaya Land Co. v. F.B. Williams Cypress Co., 258 U.S. 190, 197 (1922) (statutes of limitations do not lessen property rights or impair contracts).

In Mattson v. Department of Labor and Industries, 293 U.S. 151, 155 (1934), the Supreme Curt found that the retroactive application of a reasonable statute of limitations did not deprive a claimant of a property right without the due process of law. Plaintiffs' predecesscrs were afforded a reasonable period of time to pursue his or her claim against the United States. The bill matured on December 31, 1786. The statute barred recovery after May 1, 1794. Because Plaint-

iffs' predecessor had more than seven years to assert a claim, if one existed, the application of the 1793 Act did not deprive the hold of due process. Plaintiffs' clain is therefore time barred by the 1793 Act.

We also affirm the district court's grant of summary judgment for the United States because Plaintiffs have failed to present a triable issue of fact regarding the condition precedent to the United State's obligation to pay the bill. In responding to a summary judgment motion, the party opposing the motion must "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). Plaintiffs have come forward with neither specific facts showing that demand was made upon the State of New Hampshire,

nor with facts showing that New Hampshire was uanble to pay due to "events of war" even if demand had been made. Summary judgment in favor of the United States was therefore proper.

Affirmed.

PROOF OF SERVICE (RULE 28.2)

I, Douglas R. Greer, say and declare:

I am a member of the Bar of this Court and I am familiar with the requirements of Rule 28 of the Supreme Court Rules which provides for the mailing of the petition herein within the time set for the filing of said petition to satisfy the requirements of "filing" said petition. I declare that on February 21, 1986 I did personally deposit a true and correct copy of said petition to the Respondent and did deposit the original and 40 copies of the petition in the United States mail, all postage prepaid, at the Royal Oaks Post Office (the main branch of the United States Postal Service for the Sacramento area) in Sacramento, California addressed as follows:

Solicitor General,
Department of Justice
Washington, D.C. 20530

UNITED STATES SUPREME COURT
CLERK OF THE COURT
1 First Street N.E.
Washington, D.C.

I declare under penalty of perjury that the foregoing is true and correct and executed on this 21st day of

February 1986 at Sacramento, California.

Douglas R. Greer

DOUGLAS R. GREER
ATTORNEY AT LAW

State of California
County of Sacramento

On this the 21st day of February, 1986 before me, Marcia Ceccarelli the undersigned Notary Public, personally appeared Douglas R. Greer and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed it.
WITNESS my hand and official seal.

Marcia Ceccarelli

Marcia Ceccarelli

OFFICIAL SEAL
MARCIA CECCARELLI
NOTARY PUBLIC - CALIFORNIA
SACRAMENTO COUNTY
My Comm. Expires Sept. 5, 1989